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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.

2011-43

12 **CHUCK-OLIVER PEREZ LAPUS**
1700 De Anza Blvd., Unit 210
13 San Mateo, CA 94403
14 Registered Nurse License No. RN 569096

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about July 25, 2000, the Board of Registered Nursing issued Registered Nurse
22 License Number RN 569096 to Chuck-Oliver Perez Lopus (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought here and will
24 expire on November 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2644 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
8 Code, the Board may renew an expired license at any time within eight years after the expiration.

9 STATUTORY/REGULATORY PROVISIONS

10 6. Section 2761 of the Code states:

11 "The board may take disciplinary action against a certified or licensed nurse or deny
12 an application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 ...

15 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
16 functions, and duties of a registered nurse, in which event the record of the conviction shall be
17 conclusive evidence thereof."

18 7. Section 2762 of the Code states:

19 "In addition to other acts constituting unprofessional conduct within the meaning of
20 this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under
21 this chapter to do any of the following:

22 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
23 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
24 administer to another, any controlled substance as defined in Division 10 (commencing with
25 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
26 defined in Section 4022.

27 "(b) Use any controlled substance as defined in Division 10 (commencing with
28 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as

1 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
2 injurious to himself or herself, any other person, or the public or to the extent that such use
3 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
4 license.

5 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
6 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
7 or the possession of, or falsification of a record pertaining to, the substances described in
8 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
9 thereof."

10 8. California Code of Regulations, title 16, section 1444, states:

11 "A conviction or act shall be considered to be substantially related to the
12 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
13 present or potential unfitness of a registered nurse to practice in a manner consistent with the
14 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
15 following:

16 "(a) Assaultive or abusive conduct including, but not limited to, those violations
17 listed in subdivision (d) of Penal Code Section 11160.

18 "(b) Failure to comply with any mandatory reporting requirements.

19 "(c) Theft, dishonesty, fraud, or deceit.

20 "(d) Any conviction or act subject to an order of registration pursuant to Section 290
21 of the Penal Code."

22 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
23 revoke a license on the ground that the licensee has been convicted of a crime substantially
24 related to the qualifications, functions, or duties of the business or profession for which the
25 license was issued.

26 COST RECOVERY

27 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUGS

4 11. "Valium" is a trade name for "Diazepam" and is a Schedule IV controlled substance
5 pursuant to Health and Safety Code section 11057(d)(8), and a dangerous drug pursuant to
6 Business and Professions Code section 4022. It is classified as a depressant.

7 FIRST CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 (Bus. & Prof. Code §§2761(a), 2762(a) and (b))

10 12. Respondent has subjected his license to disciplinary action for unprofessional conduct
11 under sections 2761(a), 2762(a), and 2762(b), in that in 2008 he was arrested for driving under
12 the influence of a controlled substance which led to a collision with another vehicle. The
13 circumstances are as follows:

14 13. In December 2008, the California Highway Patrol (CHP) responded to an accident
15 involving respondent. CHP officers stopped Respondent on I-280 southbound after his car
16 collided with a silver Ford sedan. The officers identified Respondent by his California Driver's
17 License and then proceeded to ask Respondent a series of questions related to the collision. The
18 officers asked Respondent what, if anything, had he been drinking prior to the collision and
19 Respondent stated, "Nothing." The officers then asked Respondent if he was under any
20 medication and Respondent stated, "No." When asked what he had recently eaten, Respondent
21 stated that he had eaten eggs and a bagel, "After work at 9:40 a.m." The officers then asked
22 Respondent where he was driving from and Respondent stated, "Work (UCSF Medical Center)
23 and I'm going home to see my wife and baby." The officers asked Respondent if he had bumped
24 his head during the collision and he stated, "I don't think so." While gathering collision
25 information from Respondent, the officers observed that Respondent's eyes were red and watery,
26 his speech was slow and slurred, and he was off balance and had an unsteady gait. The officers
27 then explained and demonstrated the Field Sobriety Tests to Respondent. Respondent did not
28 perform the test as was explained or demonstrated. Respondent voluntarily submitted to a
Preliminary Alcohol Screening test which revealed 0.00% ethyl alcohol in his system. The

1 officers then asked Respondent if he ingested any illegal drugs and Respondent said no.
2 Respondent then stated that he took half a Valium pill when he got home each morning from
3 work. The officers asked Respondent when he had last ingested Valium and Respondent stated,
4 "10:00 a.m., yesterday." When asked how much he had taken, Respondent stated, "I only take
5 half a pill before I go to sleep." When asked if he had a prescription for Valium, Respondent
6 stated, "yes, I buy them through the internet." The officers did not find a prescription in
7 Respondent's possession. A search of Respondent's vehicle revealed that he had 36 Valium pills
8 in his possession, located in a container in which the label had been scratched off, revealing no
9 name.

10 14. Based on Respondent's statements, his involvement in a traffic collision, and his
11 physical signs of impairment, the officers arrested Respondent for driving a motor vehicle while
12 under the influence of drugs.

13 SECOND CAUSE FOR DISCIPLINE

14 (Conviction)

(Bus. & Prof. Code §§2761(f), 2762(c))

15 15. Complainant realleges the allegations contained in paragraphs 12 through 14 above,
16 and incorporates them here by reference as if fully set forth.

17 16. Respondent has subjected his license to disciplinary action under Code sections 490,
18 2761(f), and 2762(c) in that on or about January 19, 2010, in a criminal proceeding entitled *The*
19 *People of the State of California v. Chuck-Oliver Lapus*, in the San Mateo Superior Court, Case
20 Number NM382218A, Respondent was convicted by a plea of nolo contendere of one count of
21 violating Vehicle Code Section 23152(b) (driving while under the influence of drugs and one
22 count of violating Health and Safety Code 11375(b)(2) (possession of a controlled substance),
23 misdemeanors. Respondent was sentenced to five (5) days in the county jail and three (3) years
24 of court-ordered probation, ordered to enroll in, and complete, the San Mateo County First
25 Offender Program and the San Mateo County Sheriff's Alternative Sentencing Bureau Program,
26 granted a restricted use of his driver's license, and ordered to pay restitution in the amount of
27 \$1811.00.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged here, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 569096, issued to Chuck-Oliver Perez Lopus;

2. Ordering Chuck-Oliver Perez Lopus to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/15/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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